

LEGISLATURE OF NEBRASKA
NINETY-EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 492

Introduced by Tyson, 19; Janssen, 15; Jensen, 20; D. Pederson, 42;
Thompson, 14; Wehrbein, 2

Read first time January 16, 2003

Committee: Rereferred to Government, Military and Veterans Affairs

A BILL

1 FOR AN ACT relating to the Nebraska Schools Construction
2 Alternatives Act; to amend sections 79-2001 to 79-2015,
3 Revised Statutes Supplement, 2002; to rename the act; to
4 define terms; to provide for applicability of the act to
5 community colleges and state colleges; to harmonize
6 provisions; and to repeal the original sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 79-2001, Revised Statutes Supplement,
2 2002, is amended to read:

3 79-2001. Sections 79-2001 to 79-2015 shall be known and
4 may be cited as the Nebraska Schools and Colleges Construction
5 Alternatives Act.

6 Sec. 2. Section 79-2002, Revised Statutes Supplement,
7 2002, is amended to read:

8 79-2002. The purpose of the Nebraska Schools and
9 Colleges Construction Alternatives Act is to authorize a school
10 district, community college, or state college to enter into a
11 design-build contract which is subject to qualification-based
12 selection or a construction management at risk contract for a
13 public project if the school district, community college, or state
14 college adheres to the procedures set forth in the act.

15 Sec. 3. Section 79-2003, Revised Statutes Supplement,
16 2002, is amended to read:

17 79-2003. For purposes of the Nebraska Schools and
18 Colleges Construction Alternatives Act:

19 (1) Community college means an educational institution
20 operating and offering programs pursuant to sections 85-1501 to
21 85-1540;

22 (2) Construction management at risk contract means a
23 contract by which a construction manager (a) assumes the legal
24 responsibility to deliver a construction project within a
25 contracted price to the ~~school district~~ governing body, (b) acts as
26 a construction consultant to the ~~school district~~ governing body
27 during the design development phase of the project when the ~~school~~
28 ~~district's~~ governing body's architect or engineer designs the

1 project, and (c) is the builder during the construction phase of
2 the project;

3 ~~(2)~~ (3) Construction manager means the legal entity which
4 proposes to enter into a construction management at risk contract
5 pursuant to the act;

6 ~~(3)~~ (4) Design-build contract means a contract which is
7 subject to qualification-based selection between a ~~school district~~
8 governing body and a design-builder to furnish (a) architectural,
9 engineering, and related design services for a project pursuant to
10 the act and (b) labor, materials, supplies, equipment, and
11 construction services for a project pursuant to the act;

12 ~~(4)~~ (5) Design-builder means the legal entity which
13 proposes to enter into a design-build contract which is subject to
14 qualification-based selection pursuant to the act;

15 ~~(5)~~ (6) Governing body means, in the case of a school
16 district, the school board; in the case of a community college, the
17 Community College Board of Governors for the area the board serves;
18 and in the case of a state college, the Board of Trustees of the
19 Nebraska State Colleges;

20 (7) Letter of interest means a statement indicating
21 interest to enter into a design-build contract or a construction
22 management at risk contract for a project pursuant to the act;

23 ~~(6)~~ (8) Performance-criteria developer means any person
24 licensed or any organization issued a certificate of authorization
25 to practice architecture or engineering pursuant to the Engineers
26 and Architects Regulation Act who is selected by a ~~school district~~
27 governing body to assist the ~~school district~~ governing body in the
28 development of project performance criteria, requests for

1 proposals, evaluation of proposals, evaluation of the construction
2 under a design-build contract to determine adherence to the
3 performance criteria, and any additional services requested by the
4 ~~school district~~ governing body to represent its interests in
5 relation to a project;

6 ~~(7)~~ (9) Project performance criteria means the
7 performance requirements of the project suitable to allow the
8 design-builder to make a proposal. Performance requirements
9 include the following, if required by the project: Capacity,
10 durability, standards, ingress and egress requirements, description
11 of the site, surveys, soil and environmental information concerning
12 the site, interior space requirements, material quality standards,
13 design and construction schedules, site development requirements,
14 provisions for utilities, storm water retention and disposal,
15 parking requirements, applicable governmental code requirements,
16 and other criteria for the intended use of the project;

17 ~~(8)~~ (10) Proposal means an offer in response to a request
18 for proposals (a) by a design-builder to enter into a design-build
19 contract for a project pursuant to the ~~act~~ Nebraska Schools and
20 Colleges Construction Alternatives Act or (b) by a construction
21 manager to enter into a construction management at risk contract
22 for a project pursuant to the act;

23 ~~(9)~~ (11) Qualification-based selection process means a
24 process of selecting a design-builder based first on the
25 qualifications of the design-builder and then on the
26 design-builder's proposed approach to the design and construction
27 of the project;

28 ~~(10)~~ (12) Request for letters of interest means the

1 documentation or publication by which a ~~school district~~ governing
2 body solicits letters of interest;

3 ~~(11)~~ (13) Request for proposals means the documentation
4 by which a ~~school district~~ governing body solicits proposals; ~~and~~

5 ~~(12)~~ (14) School district means any school district
6 classified under section 79-102; and

7 (15) State college means an institution designated in
8 section 85-301.

9 Sec. 4. Section 79-2004, Revised Statutes Supplement,
10 2002, is amended to read:

11 79-2004. (1) Notwithstanding the procedures for public
12 lettings in sections 73-101 to 73-106 or any other statute relating
13 to the letting of bids by a political subdivision, a ~~school~~
14 ~~district~~ governing body which follows the Nebraska Schools and
15 Colleges Construction Alternatives Act may solicit and execute a
16 design-build contract or a construction management at risk
17 contract.

18 (2) The ~~school board~~ governing body shall adopt a
19 resolution selecting the design-build contract or construction
20 management at risk contract delivery system provided under the act
21 prior to proceeding with the provisions of sections 79-2005 to
22 79-2015. ~~The~~ For school districts and community colleges, the
23 resolution shall require the affirmative vote of at least
24 seventy-five percent of the school board or Community College Board
25 of Governors. For state colleges, the resolution shall require the
26 affirmative vote of at least two-thirds of the Board of Trustees of
27 the Nebraska State Colleges.

28 Sec. 5. Section 79-2005, Revised Statutes Supplement,

1 2002, is amended to read:

2 79-2005. The ~~school district~~ governing body shall adopt
3 policies for entering into a design-build contract or construction
4 management at risk contract. The policies shall require that such
5 contracts include the following:

6 (1) Procedures for selecting and hiring on its behalf a
7 performance-criteria developer when soliciting and executing a
8 design-build contract. The procedures shall be consistent with the
9 Nebraska Consultants' Competitive Negotiation Act and shall provide
10 that the performance-criteria developer (a) is ineligible to be
11 included as a provider of any services in a proposal for the
12 project on which it has acted as performance-criteria developer and
13 (b) is not employed by or does not have a financial or other
14 interest in a design-builder or construction manager who will
15 submit a proposal;

16 (2) Procedures for the preparation and content of
17 requests for proposals;

18 (3) Procedures and standards to be used to prequalify
19 design-builders and construction managers. The procedures and
20 standards shall provide that the ~~school district~~ governing body
21 will evaluate prospective design-builders and construction managers
22 based on the information submitted to the ~~school district~~ governing
23 body in response to a request for letters of interest and will
24 select design-builders or construction managers who are
25 prequalified and consequently eligible to respond to the request
26 for proposals;

27 (4) Procedures for preparing and submitting proposals;

28 (5) Procedures for evaluating proposals in accordance

1 with sections 79-2008, 79-2010, and 79-2011;

2 (6) Procedures for negotiations between the ~~school~~
3 ~~district~~ governing body and the design-builders or construction
4 managers submitting proposals prior to the acceptance of a proposal
5 if any such negotiations are contemplated;

6 (7) Procedures for filing and acting on formal protests
7 relating to the solicitation or execution of design-build contracts
8 or construction management at risk contracts; and

9 (8) Procedures for the evaluation of construction under a
10 design-build contract by the performance-criteria developer to
11 determine adherence to the performance criteria.

12 Sec. 6. Section 79-2006, Revised Statutes Supplement,
13 2002, is amended to read:

14 79-2006. (1) A ~~school district~~ governing body shall
15 prepare a request for letters of interest for design-build
16 proposals and shall prequalify design-builders in accordance with
17 this section. The request for letters of interest shall describe
18 the project in sufficient detail to permit a design-builder to
19 submit a letter of interest.

20 (2) (a) For school districts and community colleges, the
21 ~~The~~ request for letters of interest shall be ~~(a)~~ published in a
22 newspaper of general circulation within the school district or
23 community college area, as applicable, at least thirty days prior
24 to the deadline for receiving letters of interest. For state
25 colleges, the request for letters of interest shall be published in
26 a newspaper of general circulation within the locality of the
27 building project as determined by the Board of Trustees of the
28 Nebraska State Colleges. and

1 (b) The request for letters of interest shall be sent by
2 first-class mail to any design-builder upon request.

3 (3) Letters of interest shall be reviewed by the ~~school~~
4 ~~district~~ governing body in consultation with the
5 performance-criteria developer. The ~~school district~~ governing body
6 shall select prospective design-builders in accordance with the
7 procedures and standards adopted by the ~~school district~~ governing
8 body pursuant to section 79-2005. The ~~school district~~ governing
9 body shall select at least three prospective design-builders,
10 except that if only two design-builders have submitted letters of
11 interest, the ~~school district~~ governing body shall select at least
12 two prospective design-builders. The selected design-builders shall
13 then be considered prequalified and eligible to receive requests
14 for proposals.

15 Sec. 7. Section 79-2007, Revised Statutes Supplement,
16 2002, is amended to read:

17 79-2007. A ~~school district~~ governing body shall prepare
18 a request for proposals for each design-build contract in
19 accordance with this section. ~~Notice~~ For school districts, notice
20 of the request for proposals shall be published in a newspaper of
21 general circulation within the school district and filed with the
22 State Department of Education at least thirty days prior to the
23 deadline for receiving and opening proposals. For community
24 colleges, notice of the request for proposals shall be published in
25 a newspaper of general circulation within the community college
26 area at least thirty days prior to the deadline for receiving and
27 opening proposals. For state colleges, notice of the request for
28 proposals shall be published in a newspaper of general circulation

1 within the locality of the building project, as determined by the
2 Board of Trustees of the Nebraska State Colleges, at least thirty
3 days prior to the deadline for receiving and opening proposals.

4 The request for proposals shall contain, at a minimum, the
5 following elements:

6 (1) The identity of the ~~school district~~ governing body
7 for which the project will be built and the ~~school district~~
8 governing body that will execute the design-build contract;

9 (2) Policies adopted by the ~~school district~~ governing
10 body in accordance with section 79-2005;

11 (3) The proposed terms and conditions of the design-build
12 contract, including any terms and conditions which are subject to
13 further negotiation. The proposed general terms and conditions
14 shall be consistent with nationally recognized model general terms
15 and conditions which are standard in the design and construction
16 industry in Nebraska. The proposed terms and conditions may set
17 forth an initial determination of the manner by which the
18 design-builder selects any subcontractor and may require that any
19 work subcontracted be awarded by competitive bidding;

20 (4) A project statement which contains information about
21 the scope and nature of the project;

22 (5) Project performance criteria;

23 (6) Budget parameters for the project;

24 (7) Any bonds and insurance required by law or as may be
25 additionally required by the ~~school district~~ governing body;

26 (8) The criteria for evaluation of proposals and the
27 relative weight of each criterion;

28 (9) A requirement that the design-builder provide a

1 written statement of the design-builder's proposed approach to the
2 design and construction of the project, which may include graphic
3 materials illustrating the proposed approach to design and
4 construction but shall not include price proposals;

5 (10) A requirement that the design-builder agree to the
6 following conditions:

7 (a) An architect or engineer licensed to practice in
8 Nebraska will participate substantially in those aspects of the
9 offering which involve architectural or engineering services;

10 (b) At the time of the design-build offering, the
11 design-builder will furnish to the ~~school board~~ governing body a
12 written statement identifying the architect or engineer who will
13 perform the architectural or engineering work for the design-build
14 project;

15 (c) The architect or engineer engaged by the
16 design-builder to perform the architectural or engineering work
17 with respect to the design-build project will have direct
18 supervision of such work and may not be removed by the
19 design-builder prior to the completion of the project without the
20 written consent of the ~~school board~~ governing body;

21 (d) A design-builder offering design-build services with
22 its own employees who are design professionals licensed to practice
23 in Nebraska will (i) comply with the Engineers and Architects
24 Regulation Act by procuring a certificate of authorization to
25 practice architecture or engineering and (ii) submit proof of
26 sufficient professional liability insurance; and

27 (e) The rendering of architectural or engineering
28 services by a licensed architect or engineer employed by the

1 design-builder will conform to the Engineers and Architects
2 Regulation Act and rules and regulations adopted under the act; and

3 (11) Other information which the ~~school district~~
4 governing body chooses to require.

5 Sec. 8. Section 79-2008, Revised Statutes Supplement,
6 2002, is amended to read:

7 79-2008. (1) A ~~school district~~ governing body shall
8 evaluate proposals for a design-build contract in accordance with
9 this section.

10 (2) The request for proposals shall be sent only to the
11 prequalified design-builders selected pursuant to section 79-2006.

12 (3) Design-builders shall submit proposals as required by
13 the request for proposals. The ~~school district~~ governing body may
14 only proceed to negotiate and enter into a design-build contract if
15 there are at least two proposals from prequalified design-builders.

16 (4) Proposals shall be sealed and shall not be opened
17 until expiration of the time established for making proposals as
18 set forth in the request for proposals.

19 (5) Proposals may be withdrawn at any time prior to
20 acceptance. The ~~school district~~ governing body shall have the
21 right to reject any and all proposals except for the purpose of
22 evading the provisions and policies of the Nebraska Schools and
23 Colleges Construction Alternatives Act. The ~~school district~~
24 governing body may thereafter solicit new proposals using the same
25 or a different project performance criteria.

26 (6) The ~~school district~~ governing body shall rank in
27 order of preference the design-builders pursuant to the criteria in
28 the request for proposals and taking into consideration the

1 recommendation of the selection committee pursuant to section
2 79-2011.

3 (7) The ~~school district~~ governing body may attempt to
4 negotiate a design-build contract with the highest ranked
5 design-builder selected by the ~~school district~~ governing body and
6 may enter into a design-build contract after negotiations. The
7 negotiations shall include a final determination of the manner by
8 which the design-builder selects a subcontractor. If the ~~school~~
9 ~~district~~ governing body is unable to negotiate a satisfactory
10 design-build contract with the highest ranked design-builder, the
11 ~~school district~~ governing body may terminate negotiations with that
12 design-builder. The ~~school district~~ governing body may then
13 undertake negotiations with the second highest ranked
14 design-builder and may enter into a design-build contract after
15 negotiations. If the ~~school district~~ governing body is unable to
16 negotiate a satisfactory contract with the second highest ranked
17 design-builder, the ~~school district~~ governing body may undertake
18 negotiations with the third highest ranked design-builder, if any,
19 and may enter into a design-build contract after negotiations.

20 (8) ~~The~~ A school district shall file a copy of all
21 design-build contract documents with the State Department of
22 Education within thirty days after their full execution. Within
23 thirty days after completion of the project, the design-builder
24 shall file a copy of all contract modifications and change orders
25 with the department.

26 (9) If the ~~school district~~ governing body is unable to
27 negotiate a satisfactory contract with any of the ranked
28 design-builders, the ~~school district~~ governing body may either

1 revise the request for proposals and solicit new proposals or
2 cancel the design-build process under the act.

3 Sec. 9. Section 79-2009, Revised Statutes Supplement,
4 2002, is amended to read:

5 79-2009. A ~~school district~~ governing body shall prepare
6 a request for proposals for each construction management at risk
7 contract in accordance with this section. At least thirty days
8 prior to the deadline for receiving and opening proposals, notice
9 of the request for proposals shall be published in a newspaper of
10 general circulation within the ~~school district~~ area served by the
11 governing body and filed with the State Department of Education.
12 The request for proposals shall contain, at a minimum, the
13 following elements:

14 (1) The identity of the ~~school district~~ governing body
15 for which the project will be built and the ~~school district~~
16 governing body that will execute the contract;

17 (2) Policies adopted by the ~~school district~~ governing
18 body in accordance with section 79-2005;

19 (3) The proposed terms and conditions of the contract,
20 including any terms and conditions which are subject to further
21 negotiation. The proposed general terms and conditions shall be
22 consistent with nationally recognized model general terms and
23 conditions which are standard in the design and construction
24 industry in Nebraska. The proposed terms and conditions may set
25 forth an initial determination of the manner by which the
26 construction manager selects any subcontractor and may require that
27 any work subcontracted be awarded by competitive bidding;

28 (4) Any bonds and insurance required by law or as may be

1 additionally required by the ~~school district~~ governing body;

2 (5) General information about the project which will
3 assist the ~~school district~~ governing body in its selection of the
4 construction manager, including a project statement which contains
5 information about the scope and nature of the project, the project
6 site, the schedule, and the estimated budget;

7 (6) The criteria for evaluation of proposals and the
8 relative weight of each criterion; and

9 (7) A description of any other information which the
10 ~~school district~~ governing body chooses to require.

11 Sec. 10. Section 79-2010, Revised Statutes Supplement,
12 2002, is amended to read:

13 79-2010. (1) A ~~school district~~ governing body shall
14 evaluate proposals for a construction management at risk contract
15 in accordance with this section.

16 (2) The ~~school district~~ governing body shall evaluate and
17 rank each proposal on the basis of best meeting the criteria in the
18 request for proposals and taking into consideration the
19 recommendation of the selection committee pursuant to section
20 79-2011.

21 (3) The ~~school district~~ governing body shall attempt to
22 negotiate a construction management at risk contract with the
23 highest ranked construction manager and may enter into a
24 construction management at risk contract after negotiations. The
25 negotiations shall include a final determination of the manner by
26 which the construction manager selects a subcontractor. If the
27 ~~school district~~ governing body is unable to negotiate a
28 satisfactory contract with the highest ranked construction manager,

1 the ~~school district~~ governing body may terminate negotiations with
2 that construction manager. The ~~school district~~ governing body may
3 then undertake negotiations with the second highest ranked
4 construction manager and may enter into a construction management
5 at risk contract after negotiations. If the ~~school district~~
6 governing body is unable to negotiate a satisfactory contract with
7 the second highest ranked construction manager, the ~~school district~~
8 governing body may undertake negotiations with the third highest
9 ranked construction manager, if any, and may enter into a
10 construction management at risk contract after negotiations.

11 (4) ~~The~~ A school district shall file a copy of all
12 construction management at risk contract documents with the State
13 Department of Education within thirty days after their full
14 execution. Within thirty days after completion of the project, the
15 construction manager shall file a copy of all contract
16 modifications and change orders with the department.

17 (5) If the ~~school district~~ governing body is unable to
18 negotiate a satisfactory contract with any of the ranked
19 construction managers, the ~~school district~~ governing body may
20 either revise the request for proposals and solicit new proposals
21 or cancel the construction management at risk process under the ~~act~~
22 Nebraska Schools and Colleges Construction Alternatives Act.

23 Sec. 11. Section 79-2011, Revised Statutes Supplement,
24 2002, is amended to read:

25 79-2011. (1) In evaluating proposals in accordance with
26 sections 79-2008 and 79-2010, the ~~school district~~ governing body
27 shall refer the proposals for recommendation to a selection
28 committee. The selection committee shall be a group of at least

1 five persons designated by the ~~school district~~ governing body.
2 Members of the selection committee shall include (a) members of the
3 ~~school board~~ governing body, (b) members of the ~~school~~
4 administration or staff of the school district, community college,
5 or state college, as appropriate, (c) the performance-criteria
6 developer when evaluating proposals from design-builders under
7 section 79-2008 or the ~~school's~~ architect or engineer employed by
8 the governing body when evaluating proposals from construction
9 managers under section 79-2010, (d) any person having special
10 expertise relevant to selection of a design-builder or construction
11 manager under the Nebraska Schools and Colleges Construction
12 Alternatives Act, and (e) a resident of the ~~school district~~ area
13 served by the governing body other than an individual included in
14 subdivisions (a) through (d) of this subsection. A member of the
15 selection committee designated under subdivision (d) or (e) of this
16 subsection shall not be employed by or have a financial or other
17 interest in a design-builder or construction manager who has a
18 proposal being evaluated and shall not be employed by the ~~school~~
19 ~~district~~ governing body or the performance-criteria developer.

20 (2) The selection committee and the ~~school district~~
21 governing body shall evaluate proposals taking into consideration
22 the criteria enumerated in subdivisions (a) through (g) of this
23 subsection with the maximum percentage of total points for
24 evaluation which may be assigned to each criterion set forth
25 following the criterion. The following criteria shall be
26 evaluated, when applicable:

27 (a) The financial resources of the design-builder or
28 construction manager to complete the project, ten percent;

1 (b) The ability of the proposed personnel of the
2 design-builder or construction manager to perform, thirty percent;

3 (c) The character, integrity, reputation, judgment,
4 experience, and efficiency of the design-builder or construction
5 manager, thirty percent;

6 (d) The quality of performance on previous projects,
7 thirty percent;

8 (e) The ability of the design-builder or construction
9 manager to perform within the time specified, thirty percent;

10 (f) The previous and existing compliance of the
11 design-builder or construction manager with laws relating to the
12 contract, ten percent; and

13 (g) Such other information as may be secured having a
14 bearing on the selection, twenty percent.

15 (3) The records of the selection committee in evaluating
16 proposals and making recommendations shall be considered public
17 records for purposes of section 84-712.01.

18 Sec. 12. Section 79-2012, Revised Statutes Supplement,
19 2002, is amended to read:

20 79-2012. A design-build contract and a construction
21 management at risk contract may be conditioned upon later
22 refinements in scope and price and may permit the ~~school district~~
23 governing body in agreement with the design-builder or construction
24 manager to make changes in the project without invalidating the
25 contract. Later refinements under this section shall not exceed
26 the scope of the project statement contained in the request for
27 proposals pursuant to section 79-2007 or 79-2009.

28 Sec. 13. Section 79-2013, Revised Statutes Supplement,

1 2002, is amended to read:

2 79-2013. Nothing in the Nebraska Schools and Colleges
3 Construction Alternatives Act shall limit or reduce statutory or
4 regulatory requirements regarding bonding or insurance.

5 Sec. 14. Section 79-2014, Revised Statutes Supplement,
6 2002, is amended to read:

7 79-2014. (1) No more than twenty-four contracts shall be
8 executed under the Nebraska Schools and Colleges Construction
9 Alternatives Act as follows:

10 (a) For contracts under two million dollars, four
11 contracts in each congressional district;

12 (b) For contracts of at least two million dollars but
13 under ten million dollars, two contracts in each congressional
14 district; and

15 (c) For contracts of ten million dollars or more, two
16 contracts in each congressional district.

17 (2) For purposes of this section, the physical location
18 of the project shall be considered the location of the contract for
19 that project.

20 (3) The date the contract is executed shall be utilized
21 to determine whether the limitations on contracts imposed by this
22 section have been exceeded. A contract in excess of the limitation
23 on contracts shall be void.

24 Sec. 15. Section 79-2015, Revised Statutes Supplement,
25 2002, is amended to read:

26 79-2015. (1) A ~~school district~~ governing body shall not
27 use a design-build contract or construction management at risk
28 contract for a construction project with locations on parcels of

1 land which are not contiguous except for specialty maintenance
2 projects.

3 (2) For purposes of this section, (a) a specialty
4 maintenance project is a construction project for the maintenance
5 of an existing facility with a specialty contractor, such as an
6 electrical contractor or plumbing contractor, and (b) parcels are
7 considered contiguous if they would be contiguous but for the
8 existence of a public road.

9 Sec. 16. Original sections 79-2001 to 79-2015, Revised
10 Statutes Supplement, 2002, are repealed.